

GIORDANO, HALLERAN & CIESLA, P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
WWW.GHCLAW.COM

DAVID J. MILLER, ESQ.
SHAREHOLDER
ALSO ADMITTED TO PRACTICE IN NY & PA
DMILLER@GHCLAW.COM
DIRECT DIAL: (732) 219-5487

Please Reply To:
125 HALF MILE ROAD
SUITE 300
RED BANK, NJ 07701
(732) 741-3900
FAX: (732) 224-6599

April 5, 2021

VIA E-MAIL

Andrea Leshak
Assistant Regional Counsel
New York Caribbean Superfund Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007
leshak.andrea@epa.gov

**RE: Proteco Landfill Superfund Site - Request for Initial Opinion on
Reimbursement from the Post-Closure Trust Fund**

Dear Ms. Leshak:

Please accept this letter on behalf of the Proteco Landfill Superfund Site Generator Parties Group (the “Group”) as a request for an initial non-binding opinion pursuant to Paragraph 60(b) of the October 6, 2020 Settlement Agreement and Administrative Order on Consent (“AOC”) executed by the Group and the United States Environmental Protection Agency (“EPA”). Specifically, by this request the Group seeks an opinion as to whether certain costs to be incurred by the Group in the course of performing the remedial investigation/feasibility study (“RI/FS”) pursuant to the AOC are reimbursable from the Post-Closure Trust Fund.¹

I. Post-Closure Trust Fund & AOC Provisions

The AOC includes specific provisions relating to the Post-Closure Trust Fund established by the former operator of the Site and establishes a procedure whereby the Group may access the monies in the Fund to reimburse the Group for “costs incurred on post-closure expenditures,” which includes “repairing fencing, conducting maintenance, assessing and repairing certain monitoring wells, repairing the closure cover, designing and installing surface water controls, ditch and sedimentation basin cleaning, and assessing and repairing the leachate collection system. AOC, ¶60.

¹ Unless otherwise noted, capitalized terms used herein shall have the same meaning as in the AOC.

Andrea Leshak, Assistant Regional Counsel

April 5, 2021

Page 2

Paragraph 60(b) of the AOC provides:

At any time, Respondents may request an initial nonbinding opinion from EPA on whether certain costs are reimbursable under this Paragraph. EPA shall respond to any such request from Respondents indicating its nonbinding opinion as to whether certain costs are reimbursable under this Paragraph within fourteen (14) days after Respondents' request.

[AOC, ¶60(b).]

The Group respectfully submits this memorandum as a request for an initial non-binding opinion from EPA on whether costs the Group will incur to clear the site of overgrowth and other vegetation to perform the Site Reconnaissance required by the AOC are reimbursable from the Post-Closure Trust Fund.

II. Factual Background

On November 11 and 12, 2020, the Group's EPA-approved environmental consultant, Geosyntec Consultants ("Geosyntec"), performed an initial site inspection of the Site to assess its condition and identify any preliminary work needed to initiate the RI/FS process. That investigation revealed a number of on-site issues which have been relayed to EPA in both a presentation and subsequent work plan/recommendations document ("Recommendations Letter") prepared by Geosyntec at EPA's request.

A threshold issue documented in the presentation and submission to EPA is the considerable overgrowth of vegetation that has overrun the Site and that may have impacted the prior closure work. Representative photographs taken during the November 2020 initial site visit are included herewith as **Exhibit A**. Based on the Geosyntec site inspection, and as detailed in the Recommendations Letter, considerable site preparation work is needed to access all areas of the Site, properly assess the condition of the prior closure work, and to conduct the required remedial investigation to determine the impacts of site operations on the environment. In addition, because the Site owner had failed to take the necessary and appropriate steps to limit unauthorized third-party access to the Site, the Group is required to post signage as well as install physical barriers at Site access points .

III. Conclusion and Request

The above-outlined vegetation clearing work, security measures, and other costs associated with site preparation are necessary to prevent further disturbance of the Site caused by the neglect of the Site's owner/operator, as well as necessary to evaluate the integrity of Site closure work. It is the Group's view that response costs associated with site preparation

GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Andrea Leshak, Assistant Regional Counsel

April 5, 2021

Page 3

activities fall squarely within the definition of “costs incurred on post-closure expenditures.” Moreover, the clearing work qualifies as “maintenance,” an express example of “costs incurred on post-closure expenditures” set forth in the AOC. See AOC, ¶60(b). The clearing work also is necessary to “[assess] and [repair] certain monitoring wells” and “[repair] the closure cover” at the Site.

In light of the nature of the site preparation work as described above, the related costs satisfy the criteria to be considered “costs incurred on post-closure expenditures” pursuant to the AOC and should be reimbursable from the Post-Closure Trust Fund. The Group hereby requests confirmation that EPA concurs in the Group’s conclusion. Group representatives are available at your convenience to discuss this request further.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Miller". The signature is fluid and cursive, with the first name "David" and last name "Miller" clearly distinguishable.

DAVID J. MILLER

DJM/hs

Enclosure

cc: Zolymar Luna, Remedial Project Manager (*via e-mail*)
Proteco Landfill Superfund Site Generator Parties Group (*via e-mail*)

Exhibit A





